



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grants of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: **2018-08, Liberty Media 401(k) Savings Plan, D-11890; and 2018-09, CLS Investments, LLC and Affiliates, D-11931;**

SUPPLEMENTARY INFORMATION: Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. Each notice set forth a summary of the facts and representations made by the applicant for the exemption, and referred interested persons to the application for a complete statement of the facts and representations. Each application is available for public inspection at the Department in Washington, D.C.

Each notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, each notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). Each applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

Each notice of proposed exemption was issued, and each exemption is being granted, solely by the Department, because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October

27, 2011) and based upon the entire record, the Department makes the following findings:

- (a) Each exemption is administratively feasible;
- (b) Each exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) Each exemption is protective of the rights of the participants and beneficiaries of the plan.

Liberty Media 401(k) Savings Plan (the Plan)

Located in Englewood, CO

[Prohibited Transaction Exemption 2018-08;

Exemption Application No. D-11890]

WRITTEN COMMENTS

In the Notice of Proposed Exemption published in the Federal Register on April 4, 2018 at 83 FR 14505 (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing within thirty-seven (37) days of the date of the publication. All comments and requests for a hearing were due by May 11, 2018.

During the comment period, the Department received no comments and no requests for a public hearing.

After full consideration and review of the entire record, the Department has determined to grant the exemption, as set forth above. The complete application file (D-11890) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue NW, Washington DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on April 4, 2018 at 83 FR 14505.

EXEMPTION

Section I: Transactions

Effective for the period beginning May 24, 2016, and ending June 16, 2016, the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act¹ shall

¹ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the

not apply to:

(a) The acquisition by the Plan of certain stock subscription rights (the Rights) to purchase shares of Series C Liberty Braves common stock (the Series C Liberty Braves Stock), in connection with a rights offering (the Rights Offering) held by Liberty Media Corporation (LMC), the Plan sponsor and a party in interest with respect to the Plan; and

(b) The holding of the Rights by the Plan during the subscription period of the Rights Offering, provided that certain conditions are satisfied.

Section II: Conditions

(a) The Plan's acquisition of the Rights resulted solely from an independent corporate act of LMC;

(b) All holders of Series A, Series B, or Series C Liberty Braves common stock (Series A, B, or C Liberty Braves Stock), including the Plan, were issued the same proportionate number of Rights based on the number of shares of the Series A, B, or C Liberty Braves Stock held by each such shareholder;

corresponding provisions of the Code.

(c) For purposes of the Rights Offering, all holders of Series A, B, or C Liberty Braves Stock, including the Plan, were treated in a like manner, with two exceptions: (1) the oversubscription option available under the Rights Offering was not available to participants in the Plan; and (2) certain participants deemed to be reporting persons under Rule 16(b) with respect to LMC did not have the right to instruct Fidelity to either sell or exercise the Rights credited to their Plan Accounts;

(d) The acquisition of the Rights by the Plan was made in a manner that was consistent with provisions of the Plan for the individually-directed investment of participant accounts;

(e) The Liberty Media 401(k) Savings Plan Committee (the Committee) directed the Plan trustee to sell the Rights on the NASDAQ Global Select Market (the NASDAQ), in accordance with Plan provisions that precluded the Plan from acquiring additional shares of Series C Liberty Braves Stock;

(f) The Committee did not exercise any discretion with respect to the acquisition and holding of the Rights; and

(g) The Plan did not pay any fees or commissions in

connection with the acquisition or holding of the Rights,
and it did not pay any commissions to any affiliates of LMC
in connection with the sale of the Rights.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the
Department, telephone (202) 693-8456. (This is not a toll-
free number.)

CLS Investments, LLC and Affiliates (CLS or the Applicant)

Located in Omaha, NE

[Prohibited Transaction Exemption 2018-09;

Exemption Application No. D-11931]

WRITTEN COMMENTS

In the Notice of Proposed Exemption published in the
Federal Register on April 4, 2018 at 83 FR 14509 (the
Notice), the Department invited all interested persons to
submit written comments and requests for a hearing within
forty-five (45) days of the date of the publication. All
comments and requests for a hearing were due by May 19,
2018.

During the comment period, the Department received one comment letter, dated May 7, 2018, and no requests for a public hearing. The comment letter, which was submitted by CLS (the Applicant), requests certain clarifications and corrections to the operative language and the Summary of Facts and Representations (the Summary) of the Notice. Specifically, the Applicant requested that:

1. The first paragraph of Section II(m) (l) be revised so that the reference therein to "Section II(m) (l) (i)-(v)" should be changed to "Section II(m) (l) (i)-(iv)."

2. Section II(m) (l) (iv) be revised so that the reference therein to "this Section II(m) (l) (v)" should be changed to "this Section II(m) (l) (iv)."

3. Section II(o) be revised so that the reference therein to "those sections" should be changed to "that section."

4. The second sentence of Section II(p) be revised so that the reference to "paragraph (d) therein" should be changed to "paragraph (f) therein."

5. The last paragraph of Section II(q) be deleted, as the definition of "Best Interest" is already provided in Section IV(o).

6. Section IV(k)(3) be revised so that both references therein to "Section II(a)(1)-(4)" should be changed to "Section II(a)(1)-(2)."

7. Section IV(k)(4) be revised by adding the word "expenses" between the words "operating" and payable."

8. Representation 2 of the Summary clarify that CLS does not provide secondary services, although its affiliates may provide such services.

In response, the Department concurs with the Applicant's clarifications and revisions to the Notice, and has made corresponding changes to the operative language. The Department has also noted changes to the Summary in accordance with the Applicant's request.

After full consideration and review of the entire record, including the comment letter filed by the Applicant, the Department has determined to grant the exemption, as set forth above. The Applicant's comment letter has been included as part of the public record of the exemption application. The complete application file (D-11931) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200

Constitution Avenue NW, Washington DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on April 4, 2018 at 83 FR 14509.

EXEMPTION

Section I: Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code,² shall not apply to the receipt of a fee by CLS from a registered, open-end investment company for which CLS serves as an investment advisor (an Affiliated Fund), in connection with the investment by an employee benefit plan in shares of such Affiliated Fund, where CLS serves as an investment advisor or investment manager with respect to such plan (Client Plan), provided the conditions of this exemption

² For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

are met.

SECTION II. Specific Conditions

(a) Each Client Plan which is invested in shares of an Affiliated Fund either:

(1) Does not pay to CLS, for the entire period of such investment, any investment management fee, or any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined below in Section IV(l), with respect to any of the assets of such Client Plan which are invested in shares of such Affiliated Fund; or

(2) Pays to CLS a Plan-Level Management Fee, based on total assets of such Client Plan under management by CLS at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any investment advisory fee and any similar fee (the Affiliated Fund Level Advisory Fee), as defined below in Section IV(m), paid by such Affiliated Fund to CLS.

If, during any fee period, in the case of a Client Plan invested in shares of an Affiliated Fund, such Client

Plan has prepaid its Plan Level Management Fee, and such Client Plan purchases shares of an Affiliated Fund, the requirement of this Section II(a)(2) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested in shares of an Affiliated Fund:

(i) Is anticipated and subtracted from the prepaid Plan-Level Management Fee at the time of the payment of such fee; or

(ii) Is returned to such Client Plan, no later than during the immediately following fee period; or

(iii) Is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(2), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(b) No sales commissions, no redemption fees, and no

other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan in shares of an Affiliated Fund. However, this Section II(b) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase of shares in such Affiliated Fund and at the time of any sale of such shares.

(c) The combined total of all fees received by CLS is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By CLS to each Client Plan; and

(2) By CLS to each Affiliated Fund in which a Client Plan invests in shares of such Affiliated Fund;

(d) CLS does not receive any fees payable pursuant to Rule 12b-1 under the Investment Company Act in connection with the transactions covered by this exemption;

(e) No Client Plan is an employee benefit plan sponsored or maintained by CLS;

(f) In the case of a Client Plan investing in shares of an Affiliated Fund, the Second Fiduciary, as defined below in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic e-mail, in accordance with Section II(n), as set forth below) information concerning such Affiliated Fund, including but not limited to the items listed below:

(1) A current summary prospectus issued by each such Affiliated Fund;

(2) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(i) Investment advisory and similar services to be paid to CLS by each Affiliated Fund;

(ii) Secondary Services to be paid to CLS by each such Affiliated Fund; and

(iii) All other fees to be charged by CLS to such Client Plan and to each such Affiliated Fund and all

other fees to be paid to CLS by each such Client Plan and by each such Affiliated Fund;

(3) The reasons why CLS may consider investment in shares of such Affiliated Fund by such Client Plan to be appropriate for such Client Plan;

(4) A statement describing whether there are any limitations applicable to CLS with respect to which assets of such Client Plan may be invested in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(5) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this exemption;

(g) On the basis of the information described above in Section II(f), a Second Fiduciary acting on behalf of a Client Plan authorizes, in writing:

(1) The investment of the assets of such Client Plan in shares of an Affiliated Fund;

(2) The Affiliated Fund-Level Advisory Fee

received by CLS for investment advisory services and similar services provided by CLS to such Affiliated Fund;

(3) The fee received by CLS for Secondary Services provided by CLS to such Affiliated Fund;

(4) The Plan-Level Management Fee received by CLS for investment management and similar services provided by CLS to such Client Plan at the plan-level; and

(5) The selection, by CLS, of the applicable fee method, as described above in Section II(a)(1)-(2);

All authorizations made by a Second Fiduciary pursuant to this Section II(g) must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(h)(1) Any authorization, described above in Section II(g), and any authorization made pursuant to negative consent, as described below in Section II(i), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan (including any fee or charge related to such penalty), upon receipt by CLS via first class mail, via personal delivery, or via electronic e-mail of a written notification of the intent of such

Second Fiduciary to terminate any such authorization;

(2) A form (the Termination Form), expressly providing an election to terminate any authorization, described above in Section II(g), or to terminate any authorization made pursuant to negative consent, as described below in Section II(i), with instructions on the use of such Termination Form, must be provided to such Second Fiduciary at least annually, either in writing via first class mail or via personal delivery (or if such Second Fiduciary consents to such means of delivery, through electronic e-mail, in accordance with Section II(n), as set forth below). However, if a Termination Form has been provided to such Second Fiduciary pursuant to Section II(i), then a Termination Form need not be provided pursuant to this Section II(h), until at least six (6) months, but no more than twelve (12) months, have elapsed, since the prior Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described above in Section II(g), and any authorization made pursuant to negative consent, as described below in Section II(i), is

terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by CLS, via first class mail or via personal delivery or via electronic e-mail, of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization; and

(ii) As of the date that is at least thirty (30) days from the date that CLS sends the Termination Form to such Second Fiduciary, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(g), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(i), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described above in Section II(g), or intent to terminate any authorization made pursuant to negative consent, as

described below in Section II(i), the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be implemented by CLS within one (1) business day of the date that CLS receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan, some other written notification of intent to terminate any such authorization;

(5) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a pro rata share of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to CLS by such Affiliated Fund, or any other fees or charges;

(i)(1) CLS, at least thirty (30) days in advance of the implementation of each fee increase (Fee Increase(s)), as defined below in Section IV(k), must provide in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery through

electronic e-mail, in accordance with Section II(n), as set forth below), a notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described above in Section II(h); and

(2) As of the date that is at least thirty (30) days from the date that CLS sends the Notice of Change of Fees and the Termination Form to such Second Fiduciary, the failure by such Second to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(g), or to terminate the negative consent authorization, as described in Section II(i), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(j) CLS is subject to the requirement to provide

within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests CLS to provide.

(k) All dealings between a Client Plan and an Affiliated Fund are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(l) In the event a Client Plan invests in shares of an Affiliated Fund, if such Affiliated Fund places brokerage transactions with CLS, CLS will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars, of brokerage commissions that are paid to CLS by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to CLS;

(3) The average brokerage commissions per share, expressed as cents per share, paid to CLS by each such

Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to CLS;

(m)(1) CLS provides to the Second Fiduciary of each Client Plan invested in shares of an Affiliated Fund with the disclosures, as set forth below, and at the times set forth below in Section II(m)(1)(i)-(iv), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic e-mail, in accordance with Section II(q) as set forth below):

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to CLS;

(iii) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(iv) Annually, with a Termination form, as described in Section II(h)(1), and instructions on the use of such form, as described in Section II(h)(3), except that if a Termination Form has been provided to such Second Fiduciary pursuant to Section II(i), then a Termination Form need not be provided again pursuant to this Section II(m)(1)(iv) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided;

(n) Any disclosure required herein to be made by CLS to a Second Fiduciary may be delivered by electronic e-mail containing direct hyperlinks to the location of each such document required to be disclosed, which are maintained on a website by CLS, provided:

(1) CLS obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic e-mail;

(2) Such Second Fiduciary has provided to CLS a valid e-mail address; and

(3) The delivery of such electronic e-mail to such Second Fiduciary is provided by CLS in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR section 2520.104b-1(c) (substituting the word "CLS" for the word "administrator" as set forth therein, and substituting the phrase "Second Fiduciary" for the phrase "the participant, beneficiary or other individual" as set forth therein).

(o) The authorizations described in Section II(i) may be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of that section;

(p) All of the conditions of PTE 77-4, as amended and/or restated, are met. Notwithstanding this, if PTE 77-4 is amended and/or restated, the requirements of paragraph (e) therein will be deemed to be met with respect to authorizations described in Section II(i) above, but only to the extent the requirements of Section II(i) are met. Similarly, if PTE 77-4 is amended and/or restated, the requirements of paragraph (f) therein will be deemed to be met with respect to authorizations described in Section II(i) above, if the requirements of Section II(i) are met;

(q) Standards of Impartial Conduct. If CLS is a fiduciary within the meaning of section 3(21) (A) (i) or (ii) of the Act, or section 4975(e) (3) (A) or (B) of the Code, with respect to the assets of a Client Plan involved in the transaction, CLS must comply with the following conditions with respect to the transaction: (1) CLS acts in the Best Interest (as defined below, in Section IV(o)) of the Client Plan; (2) all compensation received by CLS in connection with the transaction in relation to the total services the fiduciary provides to the Client Plan does not exceed reasonable compensation within the meaning of section 408(b) (2) of the Act; and (3) CLS's statements about recommended investments, fees, material conflicts of interest,³ and any other matters relevant to a Client Plan's investment decisions are not materially misleading at the time they are made.

³ A "material conflict of interest" exists when a fiduciary has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a Client Plan. For this purpose, the failure of CLS to disclose a material conflict of interest relevant to the services it is providing to a Client Plan, or other actions it is taking in relation to a Client Plan's investment decisions, is deemed to be a misleading statement.

(r) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly is the net asset value per share (NAV), as defined below in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid, and the same sales price that would have been received, for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time; and

(s) CLS, including any officer and any director of CLS, does not purchase any shares of an Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Client Plan which invests directly in such Affiliated Fund.

SECTION III. General Conditions

(a) CLS maintains for a period of six (6) years the records necessary to enable the persons, described below in Section III(b), to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of

circumstances beyond the control of CLS, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest other than CLS shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination, as required below by Section III(b).

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, or the Securities & Exchange Commission;

(ii) Any fiduciary of a Client Plan invested in shares of an Affiliated Fund and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested in shares of an Affiliated Fund and

any representative of such participant or beneficiary;

(2) None of the persons described in Section III(b) (1) (ii) and (iii) shall be authorized to examine trade secrets of CLS, or commercial or financial information which is privileged or confidential.

SECTION IV. Definitions

For purposes of this exemption:

(a) The term "CLS" means CLS Investments, LLC and any affiliate thereof, as defined below, in Section IV(c).

(b) The term "Client Plan(s)" means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by CLS, as defined above in Section IV(a).

(c) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "Affiliated Fund" means a diversified open-end investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act, as amended, for which CLS serves as an investment adviser.

(f) The term "net asset value per share" and the term "NAV" mean the amount for purposes of pricing all purchases and sales of shares of an Affiliated Fund, calculated by dividing the value of all securities, determined by a method as set forth in the summary prospectus for such Affiliated Fund and in the statement of additional information, and other assets belonging to such Affiliated Fund or portfolio of such Affiliated Fund, less the liabilities charged to each such portfolio or each such Affiliated Fund, by the number of outstanding shares.

(g) The term "relative" means a relative as that term is defined in section 3(15) of the Act (or a member of the

family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term "Second Fiduciary" means the fiduciary of a Client Plan who is independent of and unrelated to CLS. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to CLS if:

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with CLS;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of CLS (or is a relative of such person); or

(3) Such Second Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of CLS (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(g), and any authorization, pursuant to negative consent, as described in Section II(i); and

(iii) The choice of such Client Plan's investment adviser, then Section IV(h)(2) above shall not apply.

(i) The term "Secondary Service(s)" means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by CLS to an Affiliated Fund, including, but not limited to, custodial, accounting, administrative services, and brokerage services. CLS may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined in this Section IV(i).

(j) The term "business day" means any day that:

(1) CLS is open for conducting all or substantially all of its business; and

(2) The New York Stock Exchange (or any successor exchange) is open for trading.

(k) The term "Fee Increase(s)" includes any increase by CLS in a rate of a fee previously authorized in writing by the Second Fiduciary of each affected Client Plan pursuant to Section II(g) above, and in addition includes, but is not limited to:

(1) Any fee increase that results from the addition of a service;

(2) Any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by CLS for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(g) above;

(3) Any increase in any fee that results from CLS changing from one of the fee methods, as described above in Section II(a)(1)-(2), to another of the fee methods, as described above in Section II(a)(1)-(2); and

(4) Any change in the amount of operating expenses of a Fund that is reimbursed or otherwise waived by CLS or its affiliates to the extent that such change results in an increase in the total operating expenses payable by the Fund.

(l) The term "Plan-Level Management Fee" includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to CLS for any investment management services, investment advisory services, and similar services provided by CLS to such Client Plan at the plan-level. The term "Plan-Level Management Fee" does not include a separate fee paid by a Client Plan to CLS for asset allocation service(s) (Asset Allocation Service(s)), as defined below in Section IV(n), provided by CLS to such Client Plan at the plan-level.

(m) The term "Affiliated Fund-Level Advisory Fee" includes any investment advisory fee and any similar fee paid by an Affiliated Fund to CLS under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act.

(n) The term "Asset Allocation Service(s)" means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date "glidepath" and the allocation or reallocation (including rebalancing) of the assets of a Client Plan among the selected asset classes. Such services do not include the management of the underlying assets of a Client Plan, the

selection of specific funds or manager, and the management of the selected Affiliated Funds.

(o) The term "Best Interest" means acting with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of CLS, any affiliate or other party.

EFFECTIVE DATE: This exemption will be effective as of the date the notice granting the final exemption is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number.)

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a

transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 20th day of December, 2018.

Lyssa Hall, Director
Office of Exemption Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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